


**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2018 JUL 25 AM 10:00

DEPUTY CLERK 

KINGSLEY OGBOGU

Plaintiff

v.

JONI NAVIN Department of Labor

Defendant

42 U.S.C § 12117

Civil Action No.

318 - CV 1912 - K

COMPLAINT

I am being discriminated against based on the severity of my disability and prior EEOC case that is ongoing. The Dept. of Labor has been retaliating against me by providing false and misleading information about job postings since the Agency rep. Brian Hurt and myself (Kingsley Ogbogu) entered into a settlement agreement back in August 2015. The Agency has already admitted on appeal that they have not been complying with the terms of the settlement agreement. According to the agreement I (Kingsley Ogbogu) was to receive priority consideration for any and all job I applied to Dallas Fort-Worth area

* Attach additional pages as needed.

Date 07/18/2018

Signature _____

Print Name Kingsley Ogbogu

Address 948 Middle Cove Dr

City, State, Zip Plano Texas 75023

Telephone (214) 402-3991



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

Kingsley Ogbogu, a/k/a
Rayford H.,¹
Complainant,

v.

R. Alexander Acosta,
Secretary,
Department of Labor,
Agency.

Appeal No. 0120161266

Agency Nos. DOL-13-06-101; DOL-13-06-048

DECISION

Complainant filed an appeal with this Commission concerning compliance with the terms of an August 24, 2015, settlement agreement. The Commission accepts the appeal. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

BACKGROUND

At the time of events giving rise to this complaint, Complainant applied for an Examiner position with the Agency's Office of Workers' Compensation Programs (OWCP) and for an Office Management position with the Employee Benefits Security Administration (EBSA). Both positions were located in Dallas, Texas. Complainant, however, was not selected for either position. Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. The Agency thereafter initiated two separate investigations for Agency Complaint Nos. DOL-13-06-101 and DOL-13-06-048, respectively. Following the Agency's investigations, Complainant requested a hearing before an EEOC Administrative Judge (AJ). Complainant's complaints were thereafter consolidated for a hearing.

In August 2015, before the hearing was scheduled to take place, the parties executed a settlement agreement. The settlement agreement provided, in pertinent part, that:

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

Beginning on the date this Agreement is executed by all parties, and for a period of one year thereafter, the Department will grant priority consideration to [Complainant] for any job in the Dallas/Fort Worth area within the Department of Labor for which he is a qualified applicant and for which [Complainant] applies. Priority consideration, as the term is used in this paragraph, shall mean referral of [Complainant's] resume and application package to the selecting official prior to issuance of the certificate of eligibles. Priority consideration will apply only to those jobs for which [Complainant]: (1) is qualified and (2) for which [Complainant] fulfills all the requirements required by the application process. Further to receive priority consideration for any job, [Complainant] must comply with the terms of and submit the letter attached hereto as Exhibit A along with his application. The terms of Exhibit A are hereby incorporated, in their entirety, to this Agreement.

The settlement agreement further noted that Complainant had up to 21 days in which to consider the agreement and that he had seven days after signing the agreement to revoke his consent. Complainant signed the agreement on August 10, 2015, and the Agency signed the agreement on August 24, 2015. After receiving the signed agreement from the parties, the AJ issued an order dated December 17, 2015, dismissing Complainant's claims pursuant to the settlement agreement. On March 10, 2016, Complainant thereafter filed the instant appeal, contesting the validity of the agreement, and also alternatively contending that the Agency breached the terms of the agreement.

CONTENTIONS ON APPEAL

On appeal, Complainant specifically asserts that upon further review of the agreement, within the seven-day period as prescribed, he told his attorney that he wished to revoke his signed consent to the agreement. Complainant asserts, however, that his attorney, against his wishes, did not communicate this information to either the AJ or the Agency. Complainant therefore claims that he was misinformed by his attorney and should not be forced to bear the consequences of his attorney's bad representation. Complainant further contends that within five months of signing the agreement, he applied for seven positions. Complainant asserts that he followed the terms of the agreement in applying for each position, but received no interviews.

In response, the Agency maintains that the settlement agreement is valid and enforceable. The Agency specifically maintains that Complainant's dissatisfaction and mere assertion of ineffective counsel are not adequate reasons to invalidate the settlement agreement to which he knowingly and voluntarily consented. The Agency secondly asserts that Complainant's appeal is premature because Complainant failed to notify the Agency's EEO Director of his breach of settlement claim before filing this instant appeal. The Agency therefore requests the dismissal of Complainant's appeal, so that it may have an opportunity to investigate and issue a decision on Complainant's breach claim.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.504(a) provides where a complainant believes that an agency has failed to comply with the terms of a settlement agreement, the complainant shall notify the agency EEO Director, in writing, of the alleged breach within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance. Further, 29 C.F.R. § 1614.504(b) provides that the agency shall resolve the matter and respond to the complainant in writing; and, if the agency fails to respond or if complainant is not satisfied with its response, complainant may file an appeal with this Commission 35 days after the date he/she served the agency with breach allegations.

In response to Complainant's appeal, the Agency argues that Complainant's appeal is premature and should be dismissed because it was not given the opportunity to issue a determination decision on Complainant's breach claim. However, we disagree. We note that EEOC Regulation 29 C.F.R. § 1614.504(b) provides, in relevant part, that "complainant may file such an appeal 35 days after he or she has served the agency with the allegations of noncompliance, but must file an appeal within 30 days of his or her receipt of an agency's determination." In the instant case, we find that the Agency had notice of the instant appeal and ample opportunity to issue a final determination decision on this matter while this case has been pending before the Commission. Therefore, we find that this matter is now properly before the Commission.

With respect to Complainant's claim of ineffective assistance of counsel, the Commission notes that when a complainant has voluntarily entrusted representation to an attorney, he may not avoid the consequences of his choice by arguing that the attorney did not perform the attorney's duties in a competent manner. See Nugent v. U.S. Postal Serv., EEOC Appeal No. 0120113526 (July 12, 2013).

With regard to Complainant's breach allegation, the Commission has held that priority consideration generally requires the agency to consider the employee for a position before referring any other candidate to the selecting official for consideration. See Charles D. Phillips v. Dep't of Defense, EEOC Appeal No. 01A40620 (Oct. 22, 2004).

We note that Complainant asserts on appeal that he applied for seven positions within five months of the agreement, but did not receive priority consideration as the agreement specified. Based on the present record, the Commission is unable to determine whether the Agency complied with the settlement agreement. Specifically, as the Agency admits on appeal, the record does not contain a copy of any management official's affidavit and/or other evidence supporting the determination of compliance.

As such, in accordance with the Agency's request, we shall remand this matter to the Agency for a supplemental investigation for evidence showing whether it complied with the settlement

agreement. The Agency shall thereafter issue a final decision determining regarding whether it has complied with the settlement agreement, in accordance with the order below.

ORDER

Within one hundred and twenty (120) days from the date this decision becomes final, the Agency is ORDERED to take the following action:

1. The Agency shall supplement the record with affidavits from management officials and documentary evidence indicating whether it has complied with the settlement agreement.
2. The Agency shall thereafter issue a final decision determining regarding whether it has complied with the settlement agreement.

A copy of the Agency's supplemental investigation and final decision shall be provided to the Compliance Officer as referenced herein.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

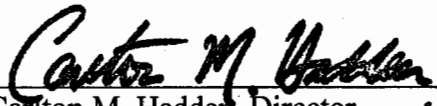
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office,

facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:


Carlton M. Hadden, Director
Office of Federal Operations

APR 20 2018

Date


CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Kingsley Ogbogu
948 Middle Cove Dr.
Plano, TX 75023

Naomi Barry-Perez, Director
Civil Rights Center
Department of Labor
200 Constitution Ave., NW #N4123
Washington, DC 20210

APR 20 2018
Date


Compliance and Control Division

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the COURT NORTHERN DISTRICT OF TEXAS purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Kingsley Ogbogu	DEFENDANTS Department of Labor
(b) County of Residence of First Listed Plaintiff Collin (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant Dallas County (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address, and Telephone Number) TBD	Attorneys (If Known) Joni Navin
318 - CV 1912 - K	

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1"><tr><th></th><th>PTF</th><th>DEF</th><th></th><th>PTF</th><th>DEF</th></tr><tr><td>Citizen of This State</td><td><input checked="" type="checkbox"/> 1</td><td><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business In This State</td><td><input type="checkbox"/> 4</td><td><input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business In Another State</td><td><input type="checkbox"/> 5</td><td><input type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					Click here for: Nature of Suit Code Descriptions.				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes					

V. ORIGIN (Place an "X" in One Box Only)
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) <input type="checkbox"/> 6 Multidistrict Litigation - Transfer <input type="checkbox"/> 8 Multidistrict Litigation - Direct File

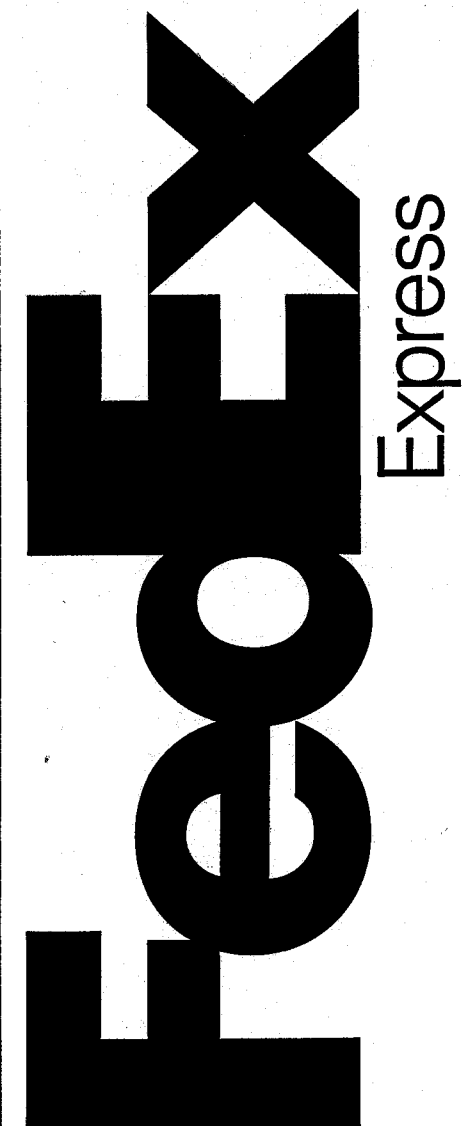
VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 12117
	Brief description of cause: Violation of civil rights in regards to employment ADA

VII. REQUESTED IN COMPLAINT:	<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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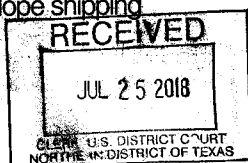
VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
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DATE	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY				
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE



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ORIGIN ID: DNEA (214) 402-3891 KINGSLEY 06BDGU 948 MIDDLE COVE DR PLANO, TX 75023 UNITED STATES US	SHIP DATE: 24 JUL 18 ACTWT: 0.30 LB CAD: 6890137/SBF01904 BILL CREDIT CARD
TO NORTHERN DISTRICT COURT CLERKS OFFICE 1100 COMMERCE ST STE 1452 DALLAS TX 75242	
(214) 758-2200 REF: DEPT:	
	
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